TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 604.

THE UNITED STATES, APPELLANT,

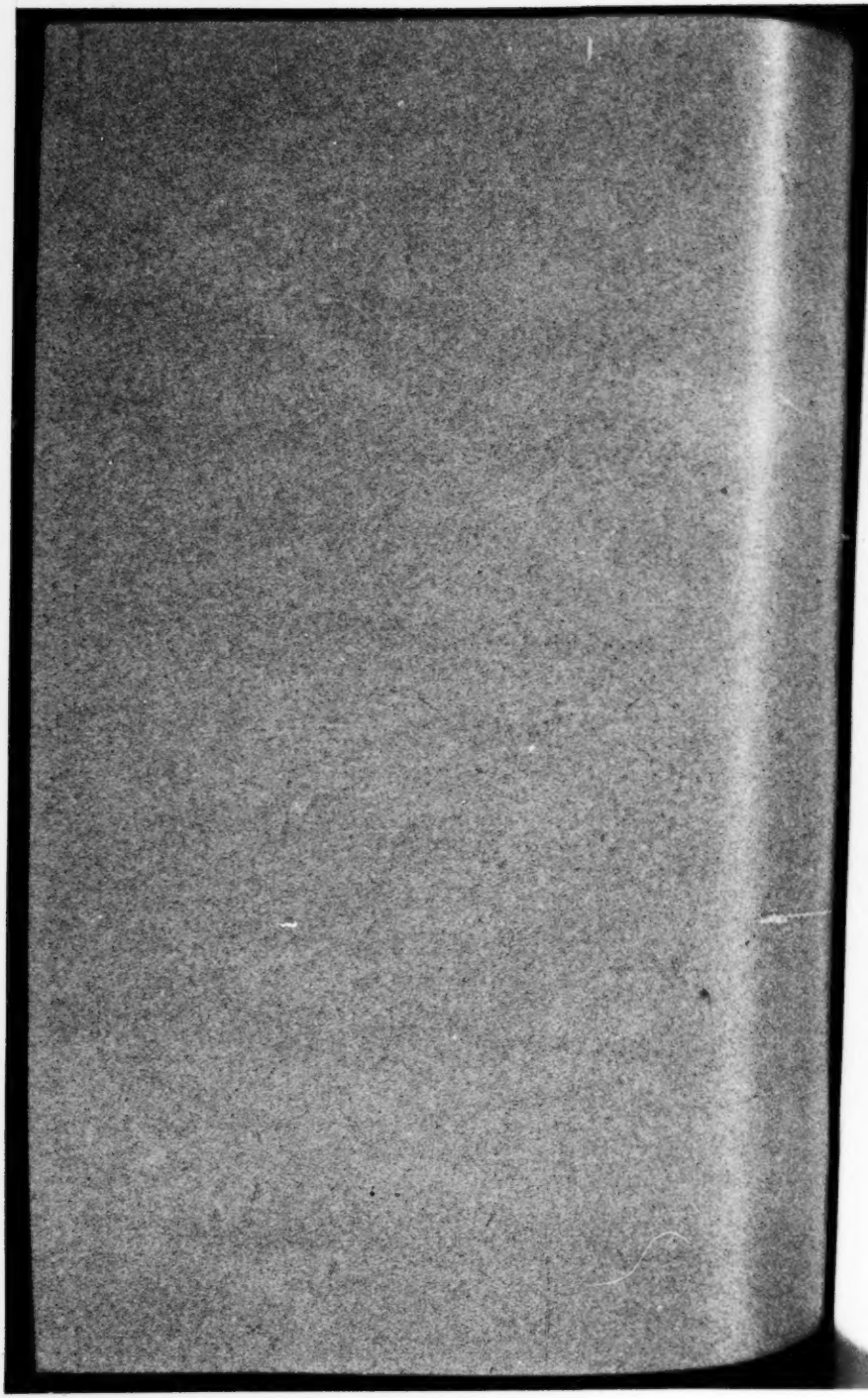
vs.

ALONZO J. VAN DUZEE.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 18, 1902.

(19457)



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20791—02

1 Court of Claims.

ALONZO J. VAN DUZEE
vs.
THE UNITED STATES. } No. 21178.

I. PETITION.—*Filed November 10, 1898.*

To the honorable judges of the Court of Claims:

Your petitioner, Alonzo J. Van Duzee, a citizen of the United States, and a resident of Dubuque, in the State of Iowa, respectfully shows:

That from the 1st day of July, 1897, to the 31st day of December, 1897, he was clerk of the United States circuit courts for the northern district of Iowa, duly qualified, and acted as said clerk.

That your petitioner presented to the accounting officers of the Treasury for payment his accounts for services as said clerk from the 1st day of July, 1897, to the 31st day of December, 1897, sworn to and duly
2 approved by the court, as required by the act of February 22, 1875, 18 Stat. L., 333; that in the settlement of said accounts the accounting officers disallowed and refused payment of fees for the following services, as per Exhibit A herewith attached.

Petitioner claims that, in accordance with the provisions of section 828 of the Revised Statutes of the United States, he is entitled to be paid by the United States for each of the services performed by him as aforesaid, and approved and allowed by the court; and though his accounts therefor have been duly presented to the accounting officers of the Treasury for payment of said fees, and although payment of the same has been repeatedly demanded, yet no part of the same has been paid to him, nor to anyone for him, nor has any part of the same been allowed to him in any way as a credit or set-off by any officer or department of the United States; but, on the contrary, allowance and payment thereof has been refused, although his accounts therefor were duly presented to and approved by said court in accordance with law.

Your petitioner further avers that no assignment or transfer of said claim, or any part thereof, has been made by him, and that he is the lawful owner thereof; that his whole compensation, if said fees were added, would not exceed the maximum compensation of $3,500.00 for any one year.

Wherefore your petitioner prays judgment against the defendant for $993.00.

ALONZO J. VAN DUZEE.

By his attorney:

CHARLES C. LANCASTER,
Washington, D. C.

EXHIBIT A.

The United States of America, Dr., to Alonzo J. Van Duzee, clerk of the circuit court of the United States for the northern district of Iowa, for services rendered on behalf of the United States from July 1, 1897, to December 31, 1897, to wit:

Item 1. For filing and entering 9,930 separate and distinct records and other official papers deposited by commissioners of the circuit court of the

United States for the northern district of Iowa, as required by the 19th section of the act of May 28, 1896, 29 Stats., 184, at 10 cents each, disallowed, per report 36766, $993.00.

3 DISTRICT OF COLUMBIA,
County of Washington, ss:

Before me, a notary public in and for the District of Columbia, personally appeared Charles C. Lancaster, who, being duly sworn, deposes and says that he is the attorney for the petitioner named in the foregoing petition, and that he is authorized by warrant of attorney, duly executed by said petitioner and filed herewith, to verify said petition, and petitioner is justly entitled to the amount therein claimed from the United States after allowing all just credits and set-offs, and that the facts therein stated are true to the best of his knowledge and belief.

CHARLES C. LANCASTER.

Subscribed and sworn to before me this 9th day of November, 1898.

ROBERT H. YOUNG,
Notary Public.

II. TRAVERSE.

ALONZO J. VAN DUZEE }
vs. } December term, A. D. 1901, No. 21178.
THE UNITED STATES. }

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney-General.

4 III. FINDINGS OF FACT AND CONCLUSION OF LAW.—*Filed February 26, 1900.*

This case having been heard by the Court of Claims, the court, upon the evidence, make the following

FINDINGS OF FACT.

I.

The claimant, Alonzo J. Van Duzee, was clerk of the circuit court of the United States for the northern district of Iowa from August, 1882, to December 31, 1897, duly qualified and acting.

II.

During said period he made up his accounts for services rendered on behalf of the United States, and presented the same, duly verified, to the United States court for approval in the presence of the district attorney, and orders approving the same as being just and according to law were entered of record. Said accounts were then presented to the accounting

officers of the Treasury Department for payment. In the settlement of the account from July 1, 1897, to September 30, 1897, part was paid, but payment of services embraced in Finding III was refused.

III.

Item 1. For filing and entering 9,930 separate and distinct records and other official papers appertaining to the offices of commissioners of the circuit court of the United States for the northern district of Iowa, which were deposited by said commissioners under the act of May 28, 1896, in the office of the clerk of the circuit court for said district, at 10 cents each, as follows:

(*a*) Dockets and records, 16	$1.60
(*b*) Information or complaints, 2,997	299.70
(*c*) Warrants, 1,984	198.40
(*d*) Subpœnas, 1,899	189.90
(*e*) Documentary testimony, 446	44.60
(*f*) Bonds, 649	64.90
(*g*) Affidavits, 445	44.50
(*h*) Mittimus	44.60
(*i*) Search warrants, 22	2.20
(*j*) Applications for discharge of poor convicts, 587	58.70
(*k*) Oaths for discharge as poor convicts, 232	23.20
(*l*) Mandates to jailer for discharge as poor convicts, 169	16.90
(*m*) Applications for seaman's wages, 24	2.40
(*n*) Summons on applications for seaman's wages, 13	1.30
(*o*) Præcipe, 1	.10
	993.00

IV.

During the period when the aforesaid services were rendered, it was the settled practice under the verbal orders of the court for the clerk to file all papers sent up by the commissioners in said district; and by a written rule of court entered of record, it was made the duty of the clerk in cases wherein the commissioner held the defendant to appear at court to file the papers and transcripts sent up by the commissioner, and to forthwith enter the case on the docket, which rule is as follows:

"*Commissioner's papers.*

"Upon receipt by the clerk of the papers and transcript of proceedings before a commissioner, wherein the party is held to appear at court, the same shall be properly filed and the same entered upon the docket."

The aforesaid services were performed in compliance with said practice and rule of court.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decide as a conclusion of law that the claimant is entitled to judgment in the sum of nine hundred and ninety-three dollars ($993).

BY THE COURT.

5 IV. OPINION OF THE COURT.

NOTT, Ch. J., delivered the opinion of the court:

The act 28th May, 1896 (29 Stat. L., 184), provides:

"That the terms of office of all commissioners of the circuit courts heretofore appointed shall expire on the thirtieth day of June, eighteen hundred and ninety-seven; and such office shall on that day cease to exist, and said commissioners shall then deposit all the records and other official papers appertaining to their offices in the office of the clerk of the circuit court by which they were appointed."

In this case the clerk filed the papers so deposited and seeks to recover the ordinary fees for filing papers, which fees amount in the aggregate to $993.

The defendants contend that the statute above quoted does not contemplate the filing of the papers as a part of the records of the office and that the clerk is entitled to no fee whatever.

Probably some of these papers were papers which the commissioners would have returned to the clerk's office for filing if they had continued in office, but it is impossible for the court to say how far this probability extends. The question, therefore, is simply this, whether depositing is equivalent within the intent of the statute to filing—whether all papers deposited should be filed.

The term "filing" is one well understood; the term "deposited" does not necessarily mean filing and of itself indicates nothing more than that the clerk's office should become, for the papers of the outgoing commissioners, a depository, a place of storage, where they would remain for safe-keeping and be found if any of them should ever be wanted.

But in the case of Marsh v. The United States (88 Fed. Rep., 879, 890, item 57) the district court for the northern district of Florida had this question under advisement, and held:

"The same act also requires that 'said commissioners shall then deposit all records and other official papers appertaining to their offices in the office of the clerk of the circuit court by which they were appointed.' Does this authorize the filing by the clerk of all papers sent in under this act? It seems clear that they become part of the records and files of the court. Some of the papers so sent in would, in any event, be sent up to be filed by the clerk, being papers in criminal cases, which there is no dispute as to the duty of the clerk to file; and in fact all but five dockets are papers of this nature, which should have been filed in any event. As to the others, as they become part of the files of the court, they should be properly indorsed and placed on the files. It is necessary for the clerk to maintain possession of the papers so sent up, to place them away in a safe place, and do all such acts as are included in the filing fee. There is no other compensation provided therefor, and the clerk should not be thus burdened without compensation, when there is an adequate and proper fee."

The defendants rested content. They had the right of appeal, but they did not see fit to exercise it. The judgment stands as a final adjudication of the rights of the parties.

It was said in the case of Meigs (20 C. Cls. R., p. 185), where the defendants, instead of appealing from a judgment against them, put the claimant to a second action:

"The defendants had their day in court, they have submitted their defenses to a court of competent jurisdiction, and the issue has been decided against them. That issue is forever settled between the parties in all future litigation. Such is the well-settled law between citizens, as decided by the Supreme Court in elaborately considered cases. (Beloit v. Morgan, 7 Wall., 619; Cromwell v. County of Sac, 94 U. S. R., 351; United States v. Nourse, 9 Pet., 8.) Interest reipublicæ ut sit finis litium.

"The judgment of this court might have been reviewed by the Supreme Court had the Attorney-General so elected. But he abandoned an appeal at the request, it is understood, of both the Secretary of the Interior and the Secretary of the Treasury, and his action is the action of the defendants." (United States v. Babbitt, 104 U. S. R., 767.)

6 In the present case the parties are different though the defendants are the same, and the decision in Marsh v. United States, of course, is not an estoppel that the present claimant can set up. But it is not to be supposed that the Government desires that a clerk in one circuit shall be paid for his services and another in another circuit shall be denied compensation for the same services; neither does it comport with the judicial integrity of the Federal authority that there be one law in one judicial district and an opposite law in another and that a gross diversity of statutory interpretation will make a suitor's legal rights dependent upon the jurisdiction in which he may chance to be. It is such uncertainties which bring reproach upon the administration of justice, and they are not to be tolerated when the means exist for bringing the diversities into one unquestionable rule. If in the case now before us the claimant had the right of appeal, this court would be at liberty to further examine the question involved and express freely its own conclusion. But in view of the fact that the defendants have, and they alone have, the means to correct the error, if error there be, the court is constrained to follow the decision above quoted and submit the determination of the question involved to that tribunal whose august province it is to reconcile all differences which may exist in the various branches of the Federal judiciary.

The judgment of the court is that the claimant recover judgment against the United States in the sum of $993.

V. Judgment of the Court.

Alonzo J. Van Duzee
vs.
United States. } No. 21178.

At a Court of Claims held in the city of Washington on the 26th day of February, 1900, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said claimant, Alonzo J. Van Duzee, do have and recover of and from the United States the sum of nine hundred and ninety-three dollars ($993).

By the Court.

7 ALONZO J. VAN DUZEE
v.
THE UNITED STATES. } No. 21178.

VI. MOTION TO VACATE JUDGMENT AND FOR A NEW TRIAL.—*Filed March 10, 1900.*

Now comes the defendant, by its Attorney-General, and moves the court to vacate its judgment rendered in the above-entitled case on February 26, 1900, and to grant a new trial of the case, for the reason that the said judgment is based upon the understanding by the court that the case of Marsh *v.* United States (88 Fed. Rep., 879), in which the same question was involved as in this case and in which the decision was in favor of the claimant, has not been appealed by the defendant, and should therefore be treated as acquiesced in by the Government, which understanding of the situation is a misapprehension.

8 The Treasury Department upon the rendition of the judgment in the Marsh case promptly requested the Attorney-General to appeal the same and appeal was accordingly directed, pursuant to which direction a writ of error was issued from the circuit court of appeals in November, 1898. This appeal is, however, still pending for the reason that the circuit court of appeals was uncertain of its jurisdiction to entertain the same by reason of the provisions of the act of June 27, 1898 (30 Stats. L., 495), repealing the jurisdiction of circuit and district courts over suits of this character. But the appeal will undoubtedly soon be heard and determined, as by a recent enactment this jurisdiction has been restored as far as cases pending at the time of the passage of the act of June 27, 1898, are concerned. Accordingly it seems desirable that this case should be tried in this court upon its merits.

L. A. PRADT,
Assistant Attorney-General.

P. M. ASHFORD,
Assistant Attorney.

9 VII. ORDER OVERRULING MOTION OF DEFENDANTS FOR NEW TRIAL, ETC.

ALONZO J. VAN DUZEE
v.
UNITED STATES. } No. 21178.

At a Court of Claims held in the city of Washington, March 3, 1902, it was ordered—

That the defendants' motion to vacate the judgment and for a new trial be overruled.

BY THE COURT.

10 VIII. APPLICATION FOR AND ALLOWANCE OF APPEAL.

ALONZO J. VAN DUZEE
v.
UNITED STATES. } No. 21178.

From the judgment rendered in the above-entitled cause on the 26th day of February, 1900, in favor of the claimant, and the order overrul-

ing the defendants' motion to vacate said judgment and for a new trial, entered March 3, 1902, the defendants, by their Attorney-General, on the 17th day of March, 1902, make application for, and give notice of, an appeal to the Supreme Court of the United States.

L. A. PRADT,
Assistant Attorney-General.

Filed March 17, 1902.

Ordered, That this appeal be allowed as prayed for.

BY THE COURT.

March 17, 1902.

11

Court of Claims.

ALONZO J. VAN DUZEE
vs.
THE UNITED STATES. } No. 21178.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law, of the opinion of the court, of the judgment of the court, of the motion for a new trial and order overruling same, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 18th day of March, A. D. 1902.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

12 (Indorsement on cover:) File No., 18457. Court of Claims. Term No., 604. The United States, appellant, vs. Alonzo J. Van Duzee. Filed March 18, 1902.

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In the Supreme Court of the United States.

THE UNITED STATES, APPELLANTS,
v.
ALONZO J. VAN DUZEE. } No. 604.

APPEAL FROM COURT OF CLAIMS.

BRIEF OF APPELLANTS.

STATEMENT OF CASE.

This action was originally brought in the Court of Claims by the appellee, clerk of the circuit court of the United States for the northern district of Iowa, to recover fees for filing certain papers deposited in his office by commissioners of the circuit court of the United States for said district, under the nineteenth section of the act of May 28, 1896 (29 Stats. L., 184). Upon the trial of the case it appeared, and the court found as a fact, that the appellee actually filed and entered 9,930 separate and distinct records and other official papers appertaining to the office of commissioners of the circuit court deposited in his office as aforesaid. The nature and character of said records and other official papers are set forth in detail in the findings of fact. The trial court rendered judgment against the United States for the full amount claimed.

It appears, however, in the opinion that the court did not pass upon the question as to whether or not the clerk was required or authorized to file the dockets and papers so deposited in his office, or whether or not he was entitled to any compensation under the law for receiving and becoming the custodian of the same, but said judgment was rendered against the appellants on the grounds that they had rested content with the decision of the district court for the northern district of Florida in the case of *Marsh* v. *United States* (88 Fed. Rep., 879, 890, item 57), in which judgment was rendered against the appellants for like services (35 C. Cls. R., 214). The court seems to have understood that the appellants had failed to appeal from the decision in the Marsh case.

Judgment was rendered in the case at bar on the 26th day of February, 1900. On the 10th day of March following, the appellants filed a motion in the Court of Claims, asking that the judgment be vacated and a new trial granted, on the grounds that as a matter of fact an appeal had been taken in the case of Marsh above referred to. This motion was allowed to rest until the final decision of the circuit court of appeals in the Marsh case was rendered. This decision being adverse to the appellants and not being appealable, the Court of Claims was asked to pass upon the motion aforesaid, which it did March 3, 1902, overruling the same, and thereupon the judgment rendered February 26, 1900, was made final.

ASSIGNMENT OF ERROR.

The Court of Claims erred:

1. In rendering judgment in favor of the appellee and against the appellants on the findings of fact stated.

ARGUMENT.

The act of May 28, 1896 (29 Stat. L., 184, paragraph 19), provides:

> That the terms of office of said commissioners of the circuit courts heretofore appointed shall expire on the 30th day of June, 1897; and such office shall on that day cease to exist, and said commissioners shall then deposit all the records and other official papers appertaining to their offices in the office of the clerk of the circuit court by which they were appointed. All proceedings pending, returnable, unexecuted, or unfinished at said date before any such commissioner shall be continued and disposed of according to law by such commissioner appointed as herein provided as may be designated by the district court for that purpose.

Under the foregoing provisions of law the commissioners in the appellee's district deposited in his office their dockets and other official papers appertaining to all the cases completed and finally disposed of before said commissioners up to June 30, 1897. All official papers in cases on that day pending or unfinished were of course retained by the commissioner, to be turned over to such United States commissioner as the district

court might designate. It is therefore perfectly clear that all the papers involved in this case referred to what may be called "dead" cases. They constituted a mass of accumulated dockets and other official papers which, under the law and practice in force prior to the 30th of June, 1897, were not required to be sent to the clerk's office for filing or for any other reason. The appellee filed and entered each paper separately. It is our contention that he was not authorized or justified in filing any of the papers so deposited in his office, and that he is not entitled to any fee or compensation whatever for filing the same or for receiving and becoming the custodian or depositary thereof.

When the Congress abolished the office of circuit court commissioner it no doubt became apparent that the dockets, records, and official papers of said commissioners were in a fair way to be lost or destroyed, and inasmuch as they might possess some value historically or for reference purposes, it very wisely provided for their preservation by requiring them to be deposited in the office of the clerk where the record of the appointment of such commissioner was. These papers were not needed to complete the files of the court in the cases to which they referred, most of which, if not all, had been long before finally and forever disposed of. They were ordered deposited in the clerk's office evidently because it was the most appropriate place for them and because they could be safely stored there. There is certainly nothing in the law or in reason requiring them to be filed. So far as the clerk had any-

thing to do with them in his official capacity he was merely a depositary. The use of the word "deposit" in the act forbids the idea that the clerk should receive any compensation. The use of the word in this connection means nothing more than that the clerk's office should become for the papers of the outgoing commissioners a depository and place of storage, where they should remain for safe-keeping, to be found if any of them should ever be wanted. Where the relationship of depositary is created by contract, it is an essential characteristic of the contract that the keeping shall be gratuitous. It follows, from the definition of the word, that the depositary is not entitled to compensation for his services. (Am. and Eng. Ency. of Law, vol. 9, p. 285, new ed.)

When the relationship of depositary is created by law the implication is that the depositary shall act without compensation. Therefore, unless there is some express provision in the statute compensating the clerks of the court for receiving and disposing of the papers deposited in their offices under the provisions of the act above quoted, such services, if they can be properly called services, must be performed without compensation. Congress has not seen fit to provide any fee for depositaries in general, nor has it provided any fee for the clerk for receiving, caring for, or otherwise disposing of the papers deposited under the provisions of the act in question. Fees are of exclusive statutory origin. Mr. Justice Jackson, delivering the

opinion of the court in the case of *United States* v. *Shields* (153 U. S., 88, 91), said:

> Fees allowed to public officers are matters of strict law, depending upon the very provisions of the statute. They are not open to equitable construction by the courts, nor to any discretionary action on the part of the officers.

It will no doubt be urged in behalf of the appellee that he did not charge for being the depositary of these books and papers, but for filing the same, and that there is an express provision of the statute providing a fee for filing papers. This argument simply takes us back to where we began. There is nothing in law, the rules of the court, or in reason, requiring said papers and dockets to be filed. They could be of no earthly use to the court in the administration of justice, or the clerk in the performance of his duties. He simply took it upon himself to file them, and it is submitted that he did so without any authority whatever.

It is claimed for him, however, that he was authorized, if not required, to file said papers by a written rule of the court, which rule is as follows:

> Commissioners' papers: Upon receipt by the clerk of the papers and transcript of proceedings before a commissioner wherein the party is held to appear at court, the same shall be properly filed and the same entered upon the docket. (Findings of fact.)

It is perfectly apparent that this rule is not applicable to the papers involved in this case. The rule was promulgated long before the act of May 28, 1896, was

adopted, and unquestionably referred to the current business of the circuit court commissioners. Under that rule the said commissioners did not send to the clerk, or, if they did, the clerk was not required to file, any papers whatever referring or relating to cases in which the defendants were discharged, and necessarily there would accumulate in the offices of said commissioners a variety of papers in connection with held cases, which were not sent up to be filed with the other papers and transcripts. It was the practice generally for commissioners to return either the originals or a copy of the warrant of arrest and warrant of commitment to the clerk along with the transcript of proceedings, as required by section 1014, Revised Statutes. All other papers, such as the complaints, the subpœnas, temporary bonds, mittimuses, etc., were retained by the commissioners. Papers of this class are the very papers which the appellee is now claiming the rule of court above quoted required him to file when deposited in his office as aforesaid.

Such a construction changes the whole scope of the rule adopted by the court. The plain and simple requirement of the rule is that the clerk shall file all papers sent in to his office by the commissioners in the regular course of business in "held" cases. The construction contended for by appellee would require an additional clause something like this: "And in the event that the Congress, in its wisdom, shall hereafter abolish the office of circuit court commissioner and require the records and other official papers appertaining to

their offices to be deposited in the office of the clerk, the same shall be filed and entered by the clerk without reference to whether they refer to held or discharged cases and without regard to whether or not the law contemplated by Congress requires them to be filed." This would reduce the rule to an absurdity, and yet it is nothing more than the construction given it by the appellee.

The statement in the fourth finding of fact (Rec., p. 3), to the effect that the services claimed for in this case were performed in compliance with the rule of court, is a mere legal conclusion, and an erroneous one, too. The statement in the third finding of fact, that the services claimed for consisted of filing papers "deposited by the commissioners under the act of May 28, 1896," makes it absolutely certain that said papers could not have been sent to the clerk's office in compliance with the said rule or the settled practice of the court.

It does not follow, because the appellee was put to some trouble, inconvenience, or labor on account of the papers deposited in his office, as aforesaid, that he must be compensated therefor. (*United States* v. *Patterson*, 150 U. S., 65, 69.)

Section 1764, Revised Statutes, prohibits any allowance or compensation being made for any extra services whatever unless expressly authorized by law. Even if it were conceded that the appellee was required to perform extra service on account of the dockets and other papers deposited with him or in his

office, as aforesaid, it certainly can not be said that any fee or compensation has been expressly provided therefor.

To sum up, it is our contention in this case that no fee or compensation whatever is provided for the clerk for being or acting as depositary of the books and papers deposited in his office under the provisions of said section 19, of the act of May 28, 1896, nor is he required to do anything to or with the papers and dockets so deposited in his office which can by analogy or assimilation entitle him to the fee allowed by section 828, Revised Statutes, for filing papers. It is therefore clear that the Court of Claims erred in rendering judgment in favor of the appellee and against the appellants on the facts found, and in refusing to vacate said judgment and dismiss the petition upon a new trial.

PHILIP M. ASHFORD,
Assistant Attorney.

L. A. PRADT,
Assistant Attorney-General.

○

No. 604.

Br. of Lancaster

Office Supreme Court U. S.
FILED
MAR 24 1902
JAMES H. MCKENNEY,
Clerk.

Filed Mar. 24, 1902.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 604.

THE UNITED STATES, Appellant,

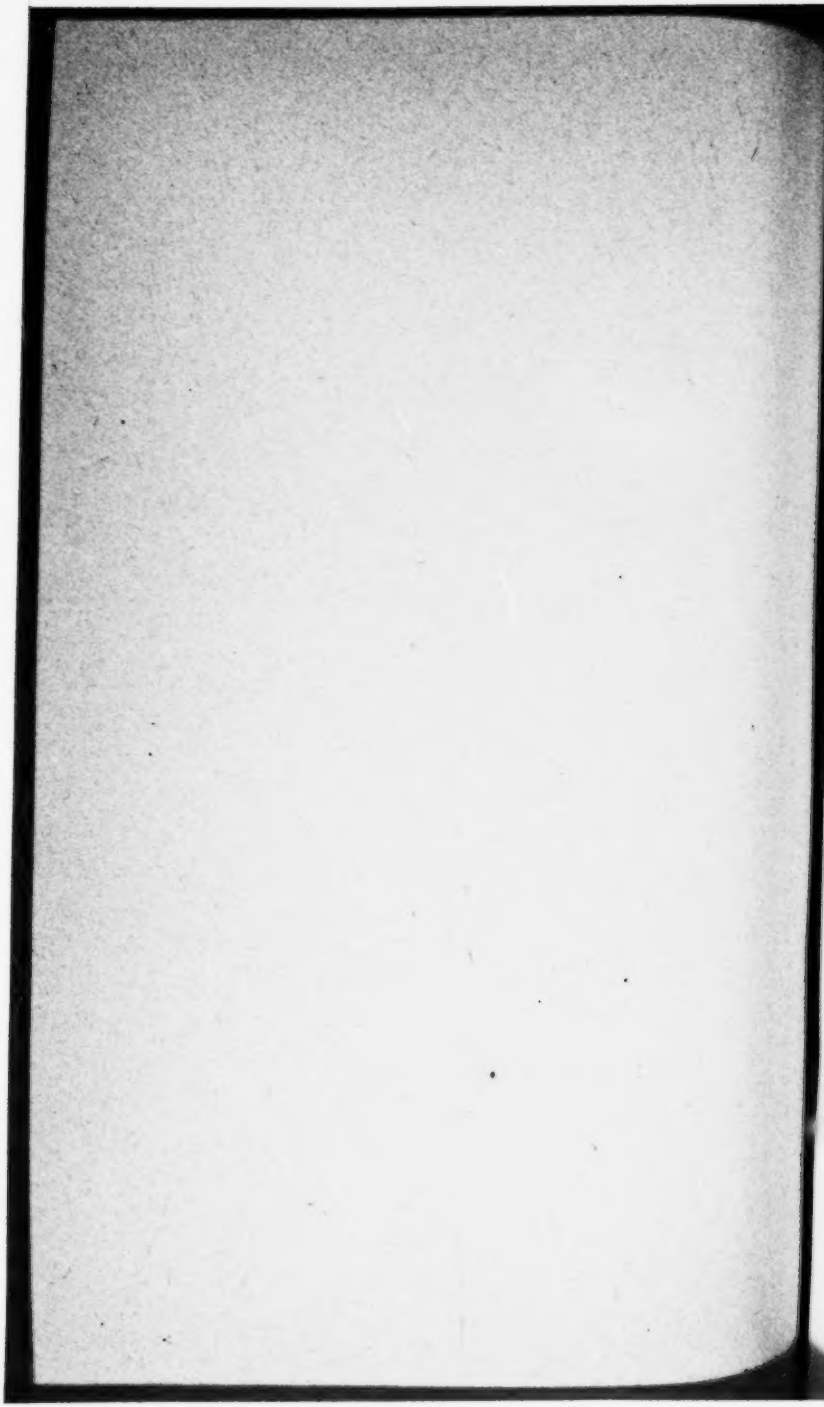
vs.

ALONZO J. VAN DUZEE, Appellee.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEE.

CHARLES C. LANCASTER,
Counsel for Appellee.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, Appellant,
vs.
ALONZO J. VAN DUZEE, Appellee. } No. 604.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEE.

STATEMENT OF FACTS.

The record shows that the appellee was clerk of the Circuit Court of the United States for the Northern District of Iowa, at Dubuque, from August, 1882, to December 31, 1897.

From July 1, 1897, to September 30, 1897, said clerk filed and entered 9,930 separate and distinct records and other official papers appertaining to the offices of the commissioners of the circuit court of the United States for the northern district of Iowa, which were deposited by said commissioners, under the act of May 28, 1896, in the office of the clerk of the circuit court for said district, for which he charged 10 cents each.

The clerk made up an account, including the said services and charges, which was duly verified and presented to the United States court for approval in the presence of the district attorney, and an order approving the same as being just and according to law was entered of record. Said account was then presented to the accounting officers of the Treasury Department for payment, but payment for the services here claimed was refused.

The record further shows that the said services were performed in compliance with the practice and rule of court.

ARGUMENT.

These records and official papers were deposited by the commissioners in the clerk's office as required by section 19 of the act of May 28, 1896 (29 Stats., 184), which provides:

"That the terms of office of all commissioners of the circuit courts heretofore appointed shall expire on the thirtieth day of June, eighteen hundred and ninety-seven; and such office shall on that day cease to exist, and said commissioners shall then deposit all the records and other official papers appertaining to their offices in the office of the clerk of the circuit court by which they were appointed. All proceedings pending, unexecuted, or unfinished at said date before any such commissioner shall be continued and disposed of according to law by such commissioner, appointed as herein provided, as may be designated by the district court for that purpose."

This law is mandatory on all the outgoing commissioners to deposit *all* the records and other official papers appertaining to their offices in the office of the clerk of the circuit court.

The manifest object and intention of the law was to *preserve* these records and official papers and not to destroy them. It is further evident and reasonable that it was not the intention of the law-makers that these records and official papers were simply to be dumped into the clerk's office and thrown around as waste paper. Such an assumption would destroy the wisdom of the legislation and defeat the clearly expressed intention of the act itself—that is, to *preserve* the records and official papers, which were the property of the United States, from destruction and for future use. It seems clear that the law intended that these records and official papers, when deposited in the clerk's office, should become a part of the records and files of the court. Otherwise, they would have been left with the outgoing commissioners for their private use.

It will be observed that the law required the outgoing commissioners to deposit *all* their records and official papers appertaining to their office, and the third finding of the court

below shows that all the papers deposited were of that character. Now, what was the duty of the clerk in the premises? Undoubtedly, to file and keep a record of each separate record and paper for future use and preservation as the property of the United States. That such was the correct interpretation of the law and its requirement is shown by the fact that after the clerk had performed this service at much labor and expense, he charged in his quarterly account the fees authorized by the third clause of section 828, Rev. Stats., "For filing and entering every declaration, plea, or other paper, ten cents," and the said account was presented to the court for approval in the presence of the district attorney, and, without objection either by the judge or the district attorney, an order was made and entered that the services were just and according to law. (R., Finding II.)

This court has held in the Jones case (134 U. S., 483), that the approval of court "is *prima facie* evidence of the correctness of the items of that account, and, in the absence of clear and unequivocal proof of mistake on the part of the court, it should be conclusive." The court below found that no mistake had been made; and in further proof that the law has been properly interpreted, the clerk of the circuit court for the northern district of Florida brought suit in the district court of the United States for similar services, and, in a lucid opinion, that court entered judgment for the claimant, from which the Attorney General appealed to the circuit court of appeals, and the judgment was affirmed. (Marsh *vs.* U. S., 88 Fed. Rep., 890, item 57; U. S. *vs.* Marsh, 106 Fed. Rep., 483.)

The record shows in the fourth finding of fact that when the aforesaid services were performed it was the settled practice, under the verbal orders of the court, for the clerk to file all papers sent up by the commissioners in said district; and by a written rule of court it was made the duty of the clerk in cases wherein the commissioner held the defendant to appear at court to file the papers and transcripts sent up by

commissioners. The court below found that "the aforesaid services were performed in compliance with said practice and rule of court."

A similar question was decided in the Van Duzee case, 140 U. S., 169, par. 1, and this Court said:

"The accounting officers of the Treasury in this case seemed to assume either that the clerk should select certain papers and file those only, or should fasten them together and file the bundle as one paper. The clerk, however, is not responsible for the manner in which such papers are transmitted by the commissioner, nor is it his duty to select out the complaint, the recognizance, or any other particular paper, and say that that only should be filed. Because the statute allows the fee 'for filing and entering,' it does not necessarily follow that before he is entitled to the fee he must enter every paper that he files upon his court docket; he may make the entry upon any proper book kept for the purpose. His duty is discharged by filing them as they are received, and exception to this charge therefor is accordingly overruled."

The binding effect of this practice and rule of the circuit court upon the clerk is pointedly set forth by this court in the Van Duzee case, *supra*, par. 10, in these words:

"When the clerk performs a service in obedience to an order of the court, he is as much entitled to compensation as if he were able to put his finger upon a particular clause of a statute authorizing compensation for such services."

The same principle is sustained in—

U. S. *vs.* Taylor, 147 U. S., 697, par. 5.
U. S. *vs.* Kurtz, 164 U. S., 53, par. 4.
U. S. *vs.* Dundy, 76 Fed. Rep., 357.

It is, therefore, submitted that no error is shown in the record, and the appeal should be dismissed.

CHARLES C. LANCASTER,
Counsel for Appellee.

Supreme Court of the United States.

No. 604.—October Term, 1901.

The United States, Appellant,
vs.
Alonzo J. Van Duzee.
} Appeal from the Court of Claims.

[April 28, 1902.]

This is an appeal from a judgment of the Court of Claims entered in favor of the appellee (claimaint below) for the sum of $993. (35 C. C. 214.) The conclusion of law by which the court determined that judgment ought to be entered against the United States was based upon the following:

"*Finding of Facts.*

"I. The claimant, Alonzo J. Van Duzee, was clerk of the Circuit Court of the United States for the Northern District of Iowa from August, 1882, to December 31, 1897, duly qualified and acting.

"II. During said period he made up his accounts for services rendered on behalf of the United States, and presented the same, duly verified, to the United States court for appproval in the presence of the district attorney, and orders approving the same as being just and according to law were entered of record. Said accounts were then presented to the accounting officers of the Treasury Department for payment. In the settlement of the account from July 1, 1897, to September 30, 1897, part was paid, but payment of services embraced in Finding III was refused.

"III. Item 1. For filing and entering 9,930 separate and distinct records and other official papers appertaining to the offices of commissioners of the Circuit Court of the United States for the Northern District of Iowa, which were deposited by said commissioners under the act of May 28, 1896, in the office of the clerk of the Circuit Court for said district, at 10 cents each as follows:

(*a*) Dockets and records, 16	$1 60
(*b*) Information or complaints, 2,997	299 70
(*c*) Warrants, 1,984	198 40
(*d*) Subpœnas, 1,899	189 90
(*e*) Documentary testimony, 446	44 60
(*f*) Bonds, 649	64 90
(*g*) Affidavits, 445	44 50
(*h*) Mittimus	44 60
(*i*) Search Warrants, 22	2 20
(*j*) Applications for discharge of poor convicts, 587	58 70
(*k*) Oaths for discharge as poor convicts, 232	23 20
(*l*) Mandates to jailer for discharge as poor convicts, 169	16 90
(*m*) Applications for seaman's wages, 24	2 40
(*n*) Summons on applications for seaman's wages, 13	1 30
(*o*) Præcipe, 1	10
	$993 00

"IV. During the period when the aforesaid services were rendered, it was the settled practice under the verbal orders of the court for the clerk to file all papers sent up by the commissioners in said district; and by a written rule of court entered of record, it was made the duty of the clerk in cases wherein the commissioner held the defendant to appear at court to file the papers and transcripts sent up by the commissioner, and to forthwith enter the case on the docket, which rule is as follows:

"'*Commissioner's papers.*

"'Upon receipt by the clerk of the papers and transcript of proceedings before a commissioner, wherein the party is held to appear at court, the same shall be properly filed and the same entered upon the docket.'

"The aforesaid services were performed in compliance with said practice and rule of court."

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

The question involves the construction of a portion of paragraph 19 of the act of Congress of May 28, 1896, (29 Stat. 184,) which reads as follows:

"That the terms of office of all commissioners of the Circuit Courts heretofore appointed shall expire on the thirtieth day of June, eighteen hundred and ninety-seven; and such office shall on that day cease to exist, and said commissioners shall then deposit all the records and other official papers appertaining to their offices in the office of the clerk of the Circuit Court by which they were appointed. All proceedings pending, returnable, unexecuted, or unfinished at said date before any such commissioner shall be continued and disposed of according to law by such commissioner appointed as herein provided, as may be designated by the District Court for that purpose."

Upon the assumption that the government had not appealed from a judgment rendered against it, in *Marsh* v. *United States*, (88 Fed. Rep. 879, 890, item 57,) upon a claim similar to that now being considered, the Court of Claims, in the case at bar, adopted the decision in the case referred to, and held that the provision of the act of 1896, above quoted, authorized the filing by the claimant of all papers deposited with him in accordance with the requirements of the act, and that by such deposit they became part of the records and files of the court of which he was clerk. The United States, however, on a motion for a new trial directed attention to the fact that the court had mistakenly supposed that the decision in the Marsh case had been acquiesced in, since proceedings to review the judgment in that case were then pending in the proper Circuit Court of Appeals.

We are unable to concur in the construction of the statute thus adopted by the court below. As said by Mr. Justice Jackson, in *United States* v. *Shields*, (153 U. S. 88, 91): "Fees allowed to public officers are matters of strict law, depending upon the very provisions of the statute. They are not open to equitable construction by the courts, nor to any discretionary action

on the part of the officers." Now, the act of 1896 did not expressly provide that the papers to be surrendered by the commissioners to the custody of the clerk should be *filed* by the latter, and we are unable to infer from the language employed that such a direction was given. Congress, having abolished the office of Circuit Court commissioner, naturally deemed it expedient to provide for the safekeeping of the dockets, records and official papers of those officers. It, therefore, directed that upon the cessation of such offices, the commissioners should "deposit" the official documents in their possession with the "clerk of the Circuit Court by which they were appointed." No good purpose would have been subserved by the formal filing of these dockets and writings, which, in the ordinary course, never would have been forwarded to the clerk for filing, and, hence, the construction which attributes to the word "deposit," as used in the statute, a meaning synonymous with "filing," is strained.

So, also, the legal conclusion embodied in the fourth finding, to the effect that the services of the claimant were performed in compliance with a rule of court promulgated prior to May 28, 1896, was erroneous. The documents in question were not covered by the rule, which plainly had relation only to the current business of the Circuit Court commissioners.

The statute which directed the deposit not having authorized the filing of the writings in question, and no provision having been made for compensating the clerk for the service of receiving and retaining them in his custody, the Court of Claims erred in awarding judgment in favor of the claimant. (*United States* v. *Patterson*, 150 U. S. 65, 69; Rev. Stat. sec. 1764.)

The decree of the Court of Claims is reversed, and the cause is remanded to that court with instructions to render judgment for the United States.

True copy.

Test:

Clerk Supreme Court, U. S.